



OFFICE OF THE DIRECTOR

Department of Transportation
Two Capitol Hill
Providence, RI 02903

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March 20, 2017

Mr. Christopher Wilson
Advisory Council on Historic Preservation
401 F Street, NW, Suite 308
Washington, DC 20001-2637

Re: *Comments of the Rhode Island Department of Transportation on
Providence Viaduct Bridge Project*

Dear Mr. Wilson:

The Rhode Island Department of Transportation (State or RIDOT) submits the following comments regarding the termination of the consultation process for the Providence Viaduct Bridge Programmatic Agreement (PA).

In 2013, in an effort to mitigate the effects of the Providence River Viaduct Project (the Project) on the Providence Covelands Archeological District, and after extensive consultation with the Narragansett Indian Historic Preservation Office (NITHPO), RIDOT purchased three properties important to the Narragansett Indian Tribe. RIDOT believes that one of these properties – the Salt Pond Archeological Preserve – standing alone and as currently held by the State would be sufficient to fully mitigate of the Project's effects. Nevertheless, RIDOT has been ready, willing and able to transfer all three properties to the Tribe since 2013 in fulfillment of its obligations under the PA.

RIDOT negotiated for, and the PA requires, fully enforceable covenants preserving the mitigation properties in perpetuity. Because of the sovereign status of Indian tribes and their immunity from suit, the mitigation properties must continue to be governed by the civil and criminal laws of the State and RIDOT must secure a limited waiver of tribal sovereign immunity to enforce the terms of the deed covenants. NITHPO has been unwilling to discuss the application of state laws to the properties or to provide such a limited waiver. As a result, the properties have not been transferred to NITHPO. They continue to be held by RIDOT and continue to serve as appropriate Project mitigation.

RIDOT remains ready, willing and able to transfer the mitigation properties, subject to the continued application of state law and fully enforceable covenants. As an alternative, RIDOT would agree to joint ownership with the Tribe of all

three properties without a waiver of tribal sovereign immunity. RIDOT has also proffered numerous other alternative mitigation proposals that would not require relinquishment of either state or tribal sovereignty, all of which have been rejected by NITHPO.

I. BACKGROUND

a. The October 2011 Programmatic Agreement and 2013 Amendment

On or about October 3, 2011, RIDOT, the FHWA, NITHPO, and the Rhode Island State Historic Preservation Office (RISHPO) (collectively, the Parties) entered into a Programmatic Agreement (“2011 PA”, attached to FHWA’s “Proposed Dispute Resolution” as Attachment A) to mitigate the effects of the Providence Viaduct Project (the Project) on the Providence Covelands Archeological District in accordance with the procedures contained in 36 CFR 800.3-800.6. The alternative mitigation contemplated in the original 2011 PA included the following measures: joint ownership of the Salt Pond Archaeological Preserve between NITHPO and RIDOT with appropriate covenants that preserve the property and its cultural resources in perpetuity; transfer of ownership of the Great Swamp Fight Memorial to NITHPO, transfer of ownership of the property known as the Chief Sachem Night Hawk house to NITHPO; and the establishment of an escrow account for the structural rehabilitation of the property known as the Granny Stanton House.

The 2011 PA included a reverter clause to be included in the deeds for the three above-referenced properties to be transferred that “gives ownership of the property to the U.S. Government on behalf of the Narragansett Indian Tribe if any attempt is made to sell or change the use of the property.” Subsequently, the transfer of certain properties under the 2011 PA became unfeasible and RIDOT determined that the above-referenced reverter clause was illegal under Supreme Court precedent. (*Carcieri v. Salazar*, 555 U.S. 379 (2009) (the United States is prohibited from holding land into trust for the Narragansett Indian Tribe since the Tribe was not under federal jurisdiction in 1934 when the Indian Reorganization Act, authorizing such fee-to-trust conversions was enacted)).

On January 17, 2013, the Parties amended the 2011 PA (the Amendment, attached to FHWA’s “Proposed Dispute Resolution as Attachment B), and agreed to the following mitigation efforts: (1) the acquisition of the Salt Pond Archaeological Preserve in the town of Narragansett to be held jointly between RIDOT and NITHPO with appropriate covenants in the deed that preserve the property and its cultural resources and provides reasonable and controlled public access; (2) the acquisition of the Providence Boys and Girls Club – Camp Davis in the Town of Charlestown to be transferred to the Tribe with appropriate covenants included in the deed to preserve the property and its cultural resources in perpetuity; and (3) the acquisition of the Chief Sachem Night Hawk property

in the town of Charlestown to be transferred to the Tribe with appropriate covenants included in the deed to preserve the property and its cultural resources in perpetuity.¹

b. Salt Pond Preservation

The *marquee* property in the catalog of mitigation efforts is the 53 acre Salt Pond Archaeological Preserve that contains the archaeological remains of a large coastal village dating from 1250, which is the most complex and intact pre-contact coastal village site discovered in New England. RIDOT worked with the Parties and the Rhode Island Attorney General's Office to successfully negotiate a condemnation settlement with the Salt Pond property owners that saved this important historic property from private development. According to the Tribe, "the Salt Pond Village is a location of great cultural, spiritual and Tribal historic significance...and has been a definitive testing ground for the evolving collaborative values of State and Tribal historic preservation within the U.S." See attached Exhibit 1, "Salt Pond Village Site Restoration." Since the execution of the 2013 Amendment, RIDOT undertook all possible measures to preserve the Salt Pond Preserve, which included hiring archaeologists to restore disturbed areas of topography and re-cover exposed archaeological features and worked with RISHPO and the Tribe, who monitored the ground restoration. *See Id.* RIDOT, in cooperation with RISHPO and NITHPO, is in the process of preserving the site and is planning to enhance the site in consultation with the Tribe as a planned passive recreational area. In accordance with Stipulation No. 3 of the 2011 PA as amended, future ownership of the Salt Pond Archaeological Preserve will be shared jointly between the State and NITHPO to be detailed in a Memorandum of Agreement between RISHPO and NITHPO in consultation with FHWA and RIDOT. NITHPO has refused to take joint ownership of the Salt Pond Preserve because of the dispute over deed covenants detailed below.

II. CURRENT DISPUTE

a. History

In order to explain the current impasse, which prevents the State from transferring any of the mitigation properties to NITHPO under the terms of the Amended PA, it is helpful to consider previous disputes between the Tribe and the State, which included a

¹ Although the Providence Boys and Girls Club and Night Hawk properties are culturally important to the Tribe, neither property are National Register eligible historic sites. The Chief Sachem Night Hawk property (mid-19th century wood frame residence) has been extensively altered to the extent that it is no longer eligible for listing in the National Register of Historic Places. Although the Providence Boys and Girls Club property lies within the 8.75 square miles National Register listed "Historic Village of the Narragansetts", none of the standing structures (post-1960) are contributing elements of the historic district and the property has never been archaeologically surveyed.

lawsuit by the Tribe against the State in the mid 1970s for possession of 3,200 acres of land in Charlestown, Rhode Island. Ultimately, the parties reached an accord and Congress passed implementing legislation resulting in the extinguishment of aboriginal title and all other Indian land claims throughout the State. In exchange, the Tribe received 900 acres of land in Charlestown and \$3.5 million dollars from the federal government for the purchase of an additional 900 acres for a total of 1,800 acres (the Settlement Lands). See the Rhode Island Indian Claims Settlement Act, 25 U.S.C. §1701, et seq. (the Settlement Act). Pursuant to the Settlement Act, the Settlement Lands are subject to the civil and criminal laws and jurisdiction of the State of Rhode Island. 25 U.S.C. §1708(a).

By requiring that the State's civil and criminal laws apply on Settlement Lands, Congress provided the State with a means available to enforce its laws. The application of State law and jurisdiction provides the State with a right to apply and enforce its laws on Settlement Lands. The Settlement Act largely abrogated the Tribe's sovereign immunity from lawsuits with respect to activities on the Settlement Lands.

The Camp Davis and Night Hawk properties are located just outside of the Settlement Lands. Without a covenant applying the State's civil and criminal laws and jurisdiction on these properties and a limited waiver of the Tribe's sovereign immunity for enforcement of the covenants, the State will likely be unable to enforce the preservation covenants in the deeds if faced with a jurisdictional and sovereign immunity defense by the Tribe. In other words, without the ability to enforce its laws on the Camp Davis and Night Hawk properties, the State would lose a critical aspect of its jurisdiction over land – its ability to enforce its laws there through judicial processes.

Even assuming that RIDOT was willing to forgo its ability to enforce the preservation covenants on the Camp Davis and Night Hawk properties – which it is not – any transfer of the State's jurisdiction over property to the United States (or, as in this case, to one of its domestic dependent nations) cannot be effected unilaterally by RIDOT. Such a transfer would likely require an act of the Rhode Island General Assembly. R.I. Gen. Laws §42-1-2 (requiring all land within the boundaries of the State be subject to its jurisdiction, except for such land ceded to the United States or purchased by the United States with the consent of the State); §42-1-3 (providing separate, itemized, statutory authorization for every parcel over which the State's jurisdiction has been ceded to the federal government from 1896 to the present).

Both NITHPO and the FHWA Regional Administrator have asserted that any requirement that the Tribe provide a limited waiver of sovereign immunity to enforce the deed covenants is “a new requirement that was not agreed to in the Programmatic Agreement.” RIDOT flatly rejects that assertion. RIDOT negotiated to transfer mitigation properties subject to “appropriate covenants that preserve the property and its cultural resources in perpetuity.” In order to make such covenants enforceable against a sovereign government like the Tribe, the State must obtain a limited waiver of tribal sovereign immunity. Rather than being a “new requirement,” such a waiver is a

background principle of Indian law and a customary part of doing business with any federally recognized Indian tribe.² Indeed, the State has secured limited waivers of tribal sovereign immunity in the past when dealing with the Narragansett. If the Tribe is not willing to enter into a limited waiver of its sovereign immunity, RIDOT will not have the legally enforceable covenants to which it is entitled under the PA.

b. Status and Efforts to Resolve Dispute

The State obtained title to the mitigation properties on February 19, 2013 (Night Hawk), May 13, 2013 (Camp Davis), and July 24, 2013 (Salt Pond). By correspondence to the Tribe in September 2013, (See Exhibit 2, Correspondence), RIDOT reiterated its continued willingness to transfer the Camp Davis and Night Hawk properties under the following conditions:

- The passage of a resolution by the Narragansett Indian Tribal Council waiving the Tribe's sovereign immunity as it pertains to the deed covenants and authorizing the NITHPO, through its Tribal Historic Preservation Officer, John Brown, to act on its behalf as to the 2011 Agreement, all Amendments thereto, and an agreement for the limited waiver of tribal sovereign immunity;
- Execution of an agreement by the NITHPO, through its Tribal Historic Preservation Officer, John Brown, which will waive the Tribe's sovereign immunity only as to the deed covenants for the land to be transferred to the Tribe as mitigation for the effects of the Providence Viaduct Bridge No. 578 Replacement Project on the Providence Covelands Archeological District; and
- Inclusion of a covenant within the deed that the mitigation properties shall continue to be subject to the civil and criminal laws

² Indeed, the federal government requires that such waivers be included in deeds from tribes:

<https://www.fws.gov/oregonfwo/contaminants/spills/newcarissa/Documents/2007Jul20ConservationEasement.pdf> (p.17, para. 24)

Even the Bureau of Indian Affairs incorporates such limited waivers of tribal sovereign immunity in its model tribal lease agreements:

<http://www.bia.gov/cs/groups/xieed/documents/text/idco10163.pdf> (p.18, para. 20)

and jurisdiction of the State of Rhode Island in perpetuity.

Included in said correspondence were draft deeds to the Camp Davis and Night Hawk properties and a draft agreement for the limited waiver of sovereign immunity. NITHPO rejected these terms.

Starting on December 4, 2013, RIDOT worked with the U.S Institute for Environmental Conflict Resolution (the Udall Foundation) at identifying and reviewing potential options and resolutions to move beyond this impasse. See Exhibit 3, “State’s Response to Options Explored by Udall Foundation Mediation.” In addition to its initial meeting with Udall in December, RIDOT participated in three other Udall mediation sessions, which took place in January, May and August, 2014. In addition to these mediation sessions, the Parties met with the Governor in yet another effort to attempt to reach an accord. Unfortunately, all such efforts proved unsuccessful.

III. ALTERNATIVES

It is RIDOT’s position that the following conditions must be met in order to transfer the Camp Davis and Night Hawk properties:

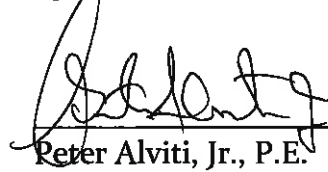
- The State’s civil and criminal laws and jurisdiction will apply in perpetuity; and
- The use of the property will be consistent with the 2011 PA, the Amendment and the objectives of Section 106 of the National Historic Preservation Act (NHPA).

The State must have the ability to enforce the abovementioned conditions in a court of law. In light of the impasse between the State and the Tribe, it is RIDOT’s belief that a land transfer from the State to the Tribe will not be possible in the absence of enforceable covenants. However, because the 2011 PA and Amendment contemplate that the State and Tribe are to be joint owners of the Salt Pond parcel, the legal and jurisdictional issues which are an obstacle in transferring the Camp Davis and Night Hawk properties largely do not exist as to Salt Pond. Considering that Salt Pond is by far the most culturally and archaeologically significant of the mitigation properties, RIDOT respectfully requests that ACHP take the State’s extensive post-acquisition remediation efforts into account as it evaluates this dispute, and accepts RIDOT’s preservation efforts of the Salt Pond Preserve as full compliance with its obligations under the Section 106 process. As discussed above, RIDOT would also be amenable to holding the mitigation properties as joint tenants with the Tribe, ensuring that State law and jurisdiction would continue to be applicable to the properties and facilitating the enforcement of the deed covenants. In the alternative, RIDOT is amenable to exploring alternative and/or

additional mitigation endeavors with the Parties, which may include revisiting efforts to transfer ownership and control of the Great Swamp Fight Memorial property to the Tribe and reprogramming comparable funds towards the betterment of the Crandall Farm and Granny Stanton House properties. These options are discussed in further detail at Exhibit 4 attached hereto.

Respectfully submitted,

State of Rhode Island
Department of Transportation,
by its Director


Peter Alviti, Jr., P.E.

cc: John M. Fowler, Executive Director, ACHP

NITHPO
NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE

Narragansett Indian Longhouse
4425A South County Trail
Charlestown, RI 02813

Date: 8-19-2013
To: Barbara Breslin / FHWA
From: Doug Harris
RE: Narragansett Salt Pond Village Site Restoration

PROJECT PROJECTION #2013-8-1

As a mitigation site restoration and interpretation project, this work falls outside any standing agreements between NITHPO-FHWA-RIDOT.

To the Narragansett Indian Tribe and its people, the Salt Pond Village is a location of great cultural, spiritual and Tribal historic significance. The full importance of this landscape has only begun to be comprehended by the local and national anthropological community. This landscape has been a definitive testing ground for the evolving collaborative values of State and Tribal historic preservation within the US. The wounds sustained by this traditional landscape in the decades old battle against the forces of development and destruction may take more than this lifetime to heal, but spiritual and landscape healing are possible and have commenced here. As an ancestral guardian and historic preservation partner at this traditional and historic Salt Pond landscape, NITHPO will participate fully in the work ahead to restore, preserve, protect and interpret this ancient place of Narragansett life ways and history.

A NITHPO field representative will be on site daily to monitor all ground disturbance work. The Preservationist for Ceremonial Landscapes will examine progress at the work site daily, extending site exam time as required and report daily to the Medicine Man for traditional advice and counseling due to the traditional cultural and spiritual nature of the injury that has been endured by the Salt Pond Village site. The Medicine Man John Brown will be on call on an as needed basis.

****COPPER PLATE CEREMONY:** The field restoration project will close with a copper plate burial coverage ceremony for each of the known burial sites, as was done in Jamestown. Currently known burials = 3. Maximum anticipated = 6. Archaeological backhoe will be needed to re-cover all burials and their copper sheeting.

Exhibit 1

PROJECT PROJECTION #2013-8-1 TASKS & DAY RATES

Narragansett Salt Pond Ancient Village Mitigation Restoration Project

The recent mitigation acquisition of the ancient Narragansett Tribal Salt Pond Village acreage and the project's status as a federal undertaking, requires the Section 106 participation of the NITHPO in the multiple phases of this rapidly evolving project. Paralleling the PAL's approved archaeological Scope of Services dated June 26, 2013, the proposed NITHPO tasks and their projected billing include, but are not limited to:

(1) Site Impact Restoration / monitoring + avoidance recommendations..... 14 weeks / 70 days
(14 weeks - Billing will reflect actual number of monitoring days in the field. NITHPO will email a daily status report to FHWA.)\$95,776.97

(1-1) <Field Specialist>	70days x \$280/d	= \$19,600
(1-2) <Deputy THPO>	70days x \$540/ ½ d	= \$37,800
(1-3) <Medicine Man>	28days x \$1200/½d	= \$33,600
<u>Daily Travel: Field Specialist-full, Dep THPO-½d</u>		= \$ 1,898.40
-70days x 24mi/RT x \$.565 x 2		
<u>Field Incidentals: (70 days x \$4.50)</u>		= \$ 315
-water, sun block & tick spray		

**** Copper Plate Burial Coverage Ceremony**

- (projected # of burials - 3 to 6)		
- site burials: coverage and honoring ceremony with copper sheeting		
- materials: (4' x 8') = \$214.29 x 3	= \$	642.87
copper sheeting (East Greenwich Winair, Inc.)		
- transport: (2 Specialists x 2 hrs x \$35/hr)	= \$	140.00
- mileage: 37m x 2 RT x 6.55	= \$	40.70
- Ceremony (Medicine Man - ½ d)	= \$	1200.00
- (Deputy THPO ½ d)	= \$	540.00
	= \$2,563.57	—\$ 2,563.57

(2) Archaeological Evidence Assessment..... 12 days

a)-assessment of spatial distribution of cultural materials		
(2-1) <Deputy THPO>	4days x \$540/½d	= \$2,160
b)-assessment of soil flotation, floral & faunal, radiocarbon dating, and ceramic analysis		
(2-2) <Deputy THPO>	4days x \$540/½d	= \$2,160
c)-assessment of seasonality & environmental study results		
(2-3) <Deputy THPO>	4days x \$540/½d	= \$2,160

(3) Participation in Public Interpretation design and presentation 9 days

-design:		
(3-1) <Deputy THPO>	2 days x \$540/½d	= \$1,080
-presentation:		
(3-2) <Medicine Man>	7 days x \$1200/½d	= \$8,400

(4) Participation In Site Trail Design 3 days

(4-1) <Deputy THPO>	3 days x \$540/½d	= \$1,620
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(5) Video Documentation (pre-production, production, post-production, presentation) 25 days

(5-1) <Medicine Man>	12 days x \$1200/½d	= \$14,400
(5-2) <Deputy THPO>	13 days x \$ 540/½d	= \$ 7,020

(6) Final Report Completion (review & comment)				4 days
(6-1) <Medicine Man>	2 days	x	\$ 1200/1/2d	= \$ 2,400
(6-2) <Deputy THPO>	2 days	x	\$ 540/1/2d	= \$ 1,080
(7) Website Preparation (review & comment)				3 days
(7-1) <Medicine Man>	1 day	x	\$1200/1/2d	= \$ 1,200
(7-2) <Deputy THPO>	2 days	x	\$ 540/1/2d	= \$ 1,080
TOTAL:				= \$140,536.97

PAYMENTS:

a) The total projected cost for Task #1 field work is \$95,776.97. To initiate work on this project, NITHPO requests a 1/3 payment (\$31,925.66) of the projected Task #1 total (\$95,776.97). At the completion of the seventh week of Task #1 an additional 1/3 payment shall be made. The final 1/3 of Task #1 shall be paid upon completion of Task #1 coinciding with the time of the completion of the Copper Plate Burial Coverage Ceremony.

b) Upon completion of Task #4 (#2,#3,#4) shall be paid in full (\$17,580).

c) Upon completion of Task #7 (#5,#6,#7) shall be paid in full (\$27,180).

<<payment schedule to be negotiated through mutual agreement between FHWA and NITHPO>>

Amendment No. 1

TO THE

MEMORANDUM OF AGREEMENT

Regarding

Consultation and Monitoring Services

By and among the

Federal Highway Administration

The

Narragansett Indian Tribal Historic Preservation Office

And the

Rhode Island Department of Transportation

This Amendment No. 1 to the Memorandum of Agreement (hereinafter MOA) is entered into by and among the United States Department of Transportation, Federal Highway Administration (hereinafter FHWA), the Narragansett Indian Tribal Historic Preservation Office (hereinafter NITHPO) and the Rhode Island Department of Transportation (hereinafter RIDOT), (the foregoing entities hereinafter referred to collectively as the Parties); and

WHEREAS, the parties entered in the MOA dated as of October 5, 2012, regarding consultation and archaeological and construction monitoring services on Federal-Aid transportation projects in Rhode Island in accordance with a Scope of Work; and

WHEREAS, the Parties have determined that the Salt Pond Village Site Restoration, which is mitigation for the Providence Viaduct Bridge No. 578. Replacement project, falls outside of the approved MOA Scope of Work; and

WHEREAS, the Parties mutually agree to amend the MOA to include the Scope of Work by NITHPO dated August 19, 2013 (attached hereto and incorporated herein as part of this Amendment) for NITHPO's consultation and monitoring of the Salt Pond Village Site Restoration.

NOW THEREFORE, the Parties agree that the MOA shall be amended as follows:

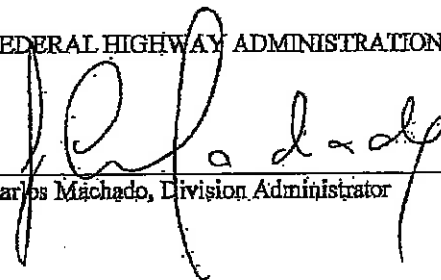
1. The August 19, 2013 Scope of Work for Salt Pond Village Site Restoration (Tasks 1 through 7) are herein incorporated into the MOA).

2. NITHPO shall submit to FHWA and RIDOT via email daily progress reports indicating by task, the NITHPO staff involved, hours expended, and description of task work accomplished.

3. Payment to NITHPO for a total amount of \$140,536.97 (80% Federal and 20% State match) shall be based on completion of tasks with the exception of the first invoice, which shall be in the amount of \$31,925.66, which represents an up front payment towards work on Task 1.

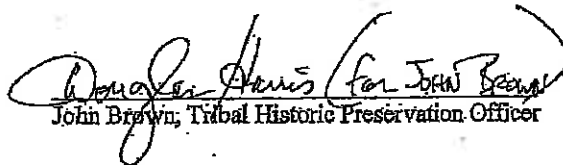
IN WITNESS WHEREOF, FHWA, NITHPO, AND RIDOT through their duly authorized representatives have executed this Amendment No. 1 to the MOA as of the date last written below.

FEDERAL HIGHWAY ADMINISTRATION


Carlos Machado, Division Administrator

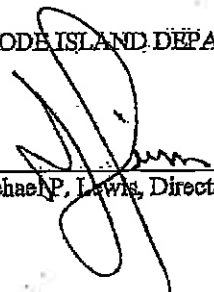
Date: 8/28/13

NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE


John Brown, Tribal Historic Preservation Officer

Date: 8-28-2013

RHODE ISLAND DEPARTMENT OF TRANSPORTATION


Michael P. Lewis, Director

Date: 8/30/13



Scope of Services
Salt Pond (RI 110)
Narragansett, Rhode Island

Supplemental Site Restoration

October 3, 2013

Submitted to:
Vanasse Hangen Brutlin, Inc.
10 Dorrance Street,
Suite 400
Providence, Rhode Island 02903
and
The Rhode Island Department of Transportation
Two Capitol Hill
State Office Building
Providence, Rhode Island 02903

The Rhode Island Department of Transportation (RIDOT) has acquired property Plat W (Map 24) Lot 82 situated at the head of Point Judith Pond in Narragansett, Rhode Island (Figure 1) as an "alternative mitigation" strategy for construction impacts to the Providence Covelands (RI 935) archaeological site and district in Providence. The property contains the culturally significant Salt Pond (RI 110) pre-contact Narragansett Indian archaeological village, which dates to the twelfth to fifteenth century A.D. The Salt Pond site was subjected to a series of Phase III data recovery archaeological investigations between 1993 and 1995 and then again between 2006 and 2007. Phase III archaeological investigations involved mechanical topsoil removal using a Gradall and backhoe along proposed subsurface utility and access road right-of-ways. The RIDOT contracted with PAL (The Public Archaeology Laboratory, Inc.) to oversee site restoration within the areas of the 2006 and 2007 archaeological site investigations, which had never been recovered following fieldwork. Site restoration commenced on September 9, 2013. Following a site visit by representatives of PAL, the RIDOT, and the Narragansett Indian Tribal Historic Preservation Office (NITHPO), the NITHPO requested that sections of the Salt Pond sited subjected to archaeological investigations between 1993 and 1995 also be restored and that a large gravel pit situated within the central site area be re-filled. Accordingly the RIDOT has requested that PAL develop a scope of work to conduct supplemental site restoration within the southern, western, and central limits of the Salt Pond archaeological site, coincident with the areas of PAL's 1993 through 1995 Phase III data recovery archaeological investigations. This document addresses this request.

Task 1: Coordination/Consultation

The PAL Project Manager will coordinate project tasks and schedule with the RIDOT. PAL senior staff will consult with the RIDOT, the Rhode Island Historical Preservation and Heritage Commission (RIHPHC), and the Narragansett Indian Tribal Historic Preservation Office (NITHPO) to discuss supplemental site restoration. Ongoing site restoration is being conducted under RIHPHC archaeological permit No. 13-16 issued on August 12, 2013. PAL will request extension of

archaeological permit No. 13-16 to include areas of additional site restoration. PAL is prepared to meet with the RIDOT and state/tribal agencies as needed.

Task 2: Site Restoration

Machine-assisted removal of site area topsoils along former Karen Ann Drive between 1993 and 1995 resulted in the creation of large spoil piles along either side of the previously proposed roadway. The 1993 through 1995 study areas are overgrown with invasive tree species, have been subjected to unsanctioned trash disposal, and are at a loss of loam due to decades of erosion. Additionally, the deep gravel pit located in the central site area has been filled with domestic debris and presents a safety hazard. PAL will oversee restoration of the topography where mechanical topsoil removal had exposed archaeological features and filling of the open gravel pit.

PAL will retain Parker Construction to re-grade excavation and construction backdirt piles over the exposed ground surfaces, removal site refuse, and secure the gravel pit. Vegetated backdirt piles will be leveled and re-distributed over exposed site surfaces by bulldozer or gradall. Additional fill will be added to the ground surface in areas where insufficient backdirt from the 1990s archaeological investigations remain. Ground litter (i.e., tree stumps, construction debris, machinery, etc.) will be removed from the site at this time. Natural debris such as vegetation, tree stumps, and boulders will be disposed of in the open gravel pit. The gravel pit will then be filled, graded, and re-contoured. Site surfaces will be covered with 3-inches of loam and hydro-seeded with wildflower. Restoration of ground surfaces will be overseen by a PAL archaeologist.

Task 5: Cataloging and Processing

Native American tools exposed during site restoration will be collected and returned to PAL's laboratory facility in Pawtucket for processing and cataloging. Processing activities will include:

- cleaning, identification, and cataloging of cultural materials;
- analysis of spatial distributions of cultural materials and feature association; and
- map and graphics production.

Appropriate conservation measures of artifacts will be taken as necessary. Conservation measures will be in accordance with the *Rhode Island Department of Transportation Archaeological Collections Center Collections Management Plan* (2004). Cultural materials will be stored in acid-free archival boxes with contents list and labels, which are printed on acid-free paper. These boxes are maintained in the PAL storage room that meets curation guidelines established by the RIHPHC.

Schedule

Site restoration will be coordinated with the RIDOT, NITEPO, and the RIHPHC and shall immediately follow the current site restoration work. Supplemental site restoration is anticipated to take twelve to fourteen weeks to complete.



Project Personnel

The project will be overseen by Principal Investigators Joseph Waller and Alan Leveillee, and Laboratory Manager Heather Olson. All PAL project personnel meet the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR 61) and RIHPHC standards.

Cost

A fee proposal is attached.

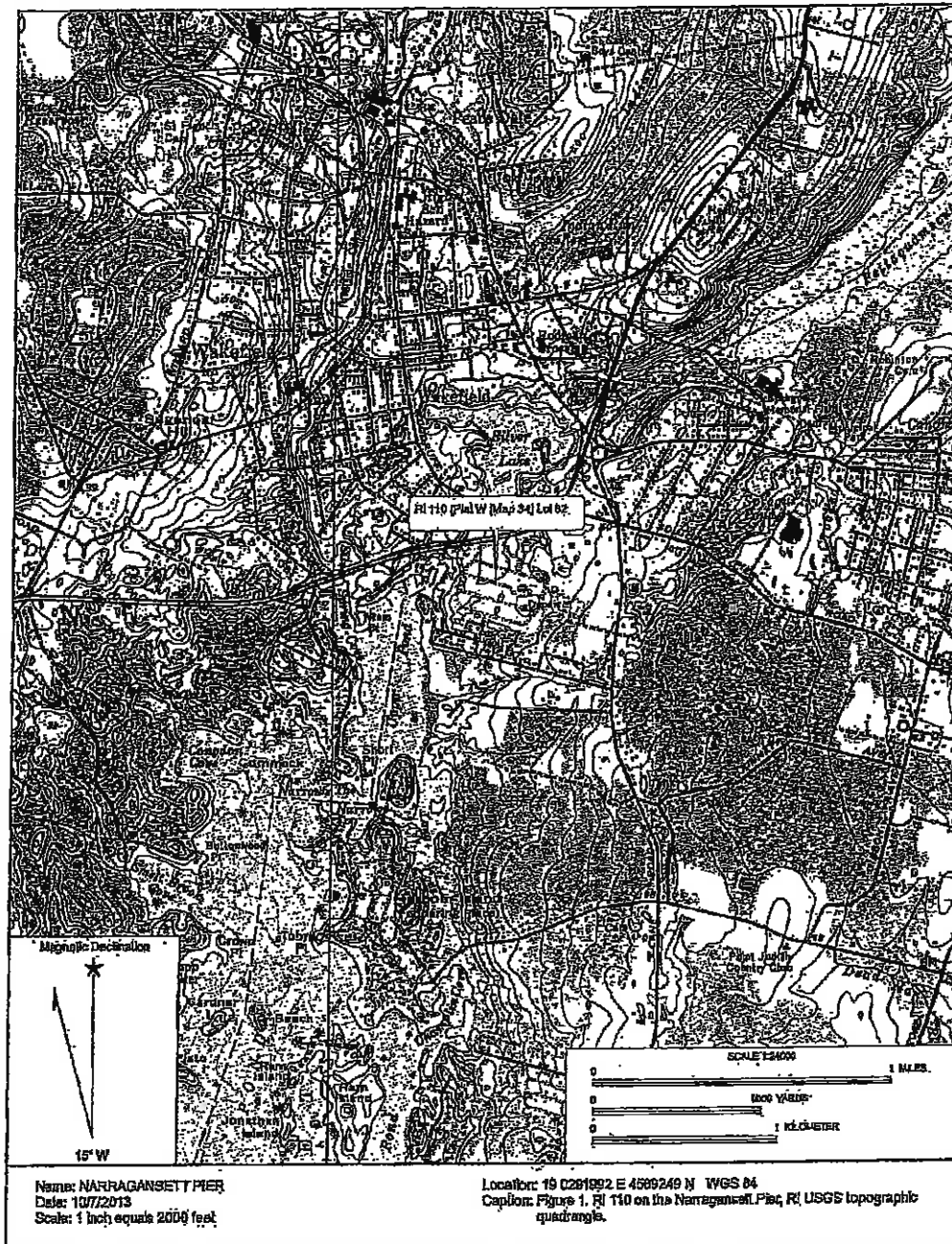


Figure 1. Archaeological site RI 110 (Plat W [Map 34] Lot 82) on the Narragansett Pier, RI USGS topographic quadrangle.



Scope of Services
Salt Pond (RI 110)
Supplemental Site Restoration
page 5 of 5



PUBLIC ARCHAEOLOGY LABORATORY - COST PROPOSAL -

PREPARED FOR Rhode Island Department of Transportation
DATE October 3, 2013
PROJECT Salt Pond (RI 110)
SERVICES Supplemental Site Restoration
Karen Ann Drive, Gravel Pit, Back Parcel, Winter/Spring Seeding

PERSONNEL	TASK	HOURS	RATE	COST
Project Manager	Coordination/Meetings	24	48.00	1,152
Principal Investigator	Consultation/Meetings	24	48.00	1,152
	Field Survey	88	48.00	4,224
Project Archaeologist	Field Survey	440	33.00	14,520
Laboratory Manager	Laboratory Coordination	2	33.00	66
Laboratory Analyst	Data Entry/Cataloging	4	25.00	100
Laboratory Assistant	Processing	6	22.00	132
TOTAL PERSONNEL COSTS		588		21,346
INDIRECT COST RATE				
Overhead Expense			108.91%	23,248
OTHER EXPENSES	DESCRIPTION			COST
Expendable Supplies	Archival Paper, Bags etc.			50
Mileage	5,000 Miles @ \$	0.565		2,825
Machine Work				
Mobilization/Demob				1,000
Front End Loader	15 Days @ \$	330.00		4,950
Bulldozer	55 Days @ \$	275.00		15,125
Operator	55 Days @ \$	600.00		33,000
Fuel				4,500
Tree/vegetation cutting and clearing				4,200
Disposal Costs				
	200 Tires @ \$	11.00		2,200
Misc Metal per Load	1 Misc Metal @ \$	600.00		600
Additional Backfill Material				
Loam				40,000
HydroSeed Mix 2 applications				40,000
Videographer				70,000
Curation	1 Boxes @ \$	100.00		100
TOTAL OTHER EXPENSES				218,550
FIXED FEE @10% OF PERSONNEL & OVERHEAD				4,459
TOTAL PAL COST PROPOSAL				267,603

* This quote is valid for 120 days from date listed above.



Scope of Services Salt Pond (RI 110) Narragansett, Rhode Island

*Analyses, Reporting, Public Education and
Site Restoration*

Submitted to:

June 26, 2013

Vanasse Hangen, Brustlin, Inc.
Providence, Rhode Island
and

Rhode Island Department of Transportation
Two Capitol Hill,
State Office Building
Providence, Rhode Island 02903

The Rhode Island Department of Transportation (RIDOT) is planning the acquisition of property situated at the head of Point Judith Pond in Narragansett (Figure 1). The property, filed with the town as Plat W (Map 24) Lot 82, contains the culturally significant Salt Pond (RI 110) archaeological site. The Salt Pond site is a pre-contact Narragansett Indian village that primarily dates to the twelfth to fifteenth century A.D. The Salt Pond site was subject to a series of Phase III data recovery archaeological investigations between 1993 and 1995 and then again between 2006 and 2007. Completion of post-excavation processing, analyses, and reporting on the results of the data recovery archaeological investigations of RI 110 was not completed. The RIDOT plans to acquire the Salt Pond Site as "alternative mitigation" for impacts to the Providence Covelands (RI 935) archaeological site and district in Providence from the Providence Viaduct Project. The RIDOT has requested that The Public Archaeology Laboratory, Inc. (PAL) develop a scope of work to complete artifact curation, analyses of RI 110's archaeological content, documentation of this significant archaeological resource, and the public dissemination of the archaeological and cultural data. This document addresses this request.

Analyses and final report documentation of the archaeological investigations of the Salt Pond Site includes the following tasks.

Task 1: Coordination/Consultation

Archaeological field investigations were conducted under Rhode Island Historical Preservation and Heritage Commission (RIHPHC) archaeological permits. PAL senior staff will consult with the RIDOT, the RIHPHC, and the Narragansett Indian Tribal Historic Preservation Office (NITHPO) to discuss the analyses and content of the report. PAL is prepared to meet with the RIDOT and state/tribal agencies as needed. The PAL Project Manager will coordinate project tasks, schedule, and deliverables with the RIDOT.



Task 2: Research

Archaeological site files maintained by the RIHPHC and PAL will be reviewed for information on RI 110 and nearby archaeological sites. Published and unpublished archaeological reports and articles salient to the site will be reviewed. The NITHPO will also be consulted for information on RI 110 and on the Narragansett Indian oral history of occupation and use of the upper Point Judith Pond area.

Task 3: Field Investigations

Archaeological features exposed during Phase III data recovery investigations of the Salt Pond site were left exposed following the 2006 and 2007 fieldwork. Machine scraping resulted in the generation of large spoil piles along either side of the previously proposed residential access drive. PAL staff will conduct a walkover of the Salt Pond site with the RIDOT, RIHPHC, and the NITHPO to assess existing site conditions and the integrity of previously exposed archaeological deposits. Artifacts exposed on ground surfaces will be noted. No archaeological excavation will be conducted during the field review, though one-liter soil samples may be collected as soil controls for the proposed soil flotation analysis (see below).

Task 4: Site Restoration

PAL will oversee restoration of topography where bull-dozing had previously disturbed soils and where Narragansett Indian features and burials are exposed and need to be covered and protected. PAL will retain Parker Thompson construction to re-grade excavation and construction backdirt piles over the exposed ground surfaces and archaeological features exposed during the 2006 and 2007 archaeological field. Vegetated backdirt piles will be leveled and re-distributed over exposed site surfaces by bulldozer. Ground litter (i.e., tree stumps, construction debris, machinery, etc.) will be removed from the site at this time. Site surfaces will be covered with 3-inches of loam and hydro-seeded with wildflower. Restoration of ground surfaces will be overseen by a PAL archaeologist.

Task 5: Cataloging and Processing

Unprocessed cultural artifacts and materials recovered from the Salt Pond site/RI 110 will be processed. Processing activities will include:

- cleaning, identification, and cataloging of cultural materials;
- analysis of spatial distributions of cultural materials and feature association; and
- map and graphics production.

Appropriate conservation measures of artifacts will be taken as necessary. Conservation measures will be in accordance with the *Rhode Island Department of Transportation Archaeological Collections Center Collections Management Plan* (2004). Cultural materials will be stored in acid-



free archival boxes with contents list and labels, which are printed on acid-free paper. These boxes are maintained in the PAL storage room that meets curation guidelines established by the RIHPHC.

Task 6: Specialized Analyses

The RI 110 artifact assemblage is large and varied. Specialized analyses for a number of the site's artifacts will provide data concerning the late pre-contact environment of Narragansett and Narragansett Indian resource exploitation and settlement in Rhode Island. Proposed specialized analyses include:

Soil Flotation

Representative soils collected from feature contexts at RI 110 will be subjected to soil flotation to recover botanical remains (e.g. nuts, seeds, wood charcoal, vegetal fibers, etc.) and cultural materials too small to be recovered by standard archaeological screening. Archaeological soil samples recovered from the Salt Pond site will be floated using the Model A Flote-Tech machine, which utilizes a multi-modal flotation technique. The system circulates water in a closed loop between a water reservoir and a flotation tank. Provision is made for removing the residue from the system without loss of water from the loop. A method of incorporating aeration into the water makes the flotation process more efficient than conventional techniques. Using the system's baffle, objects having a specific gravity slightly greater than water are removed easily. Two mesh sizes are used in the system, a coarse fraction screen measuring 1.0 mm in size and a fine fraction screen measuring 0.33 mm in size.

Following soils flotation, the recovered materials will be divided into heavy and light fractions. Each fraction will then be scanned using both an illuminated desk magnifier fitted with a 3-diopter lens (1.75x magnification) and a stereomicroscope with magnification ranges of 7x to 40x. Recovered materials will be recorded, separated into plastic vials, and labeled and then curated along with the site's cultural assemblage. Botanical remains will be separated into charred and uncharred specimens and identified by species and type, when possible. Cultural materials will also be identified. Cultural materials and botanicals recovered during soils flotation will be inventoried and added to the Salt Pond artifact catalog.

Floral/Faunal

Floral (seeds, nuts, vegetal matter, wood charcoal) and faunal remains (bone and shell) collected from RI 110 either through excavation or soil flotation will be identified by type and species when possible. PAL owns seed and osteological manuals, as well as reference collections. PAL staff and/or an outside consultant will make species identifications of faunal and floral remains as necessary.

Radiocarbon Dating

Radiocarbon dating provides estimates on the age of organic materials. RI 110 was occupied by a large population for a substantial period of time. It is expected that radiometric dating of carbon bearing materials i.e. shell, bone, wood charcoal, etc. will provide information about the timing, age, and duration of the site's archaeological content. PAL proposes up to 60 Accelerator Mass



Spectrometry (AMS) radiocarbon dates to assist in refining the age and duration of occupation at the Salt Pond site. Radiocarbon samples may be sent to more than one dating laboratory for comparative purposes.

Ceramic Analysis

Archaeological investigations at the Salt Pond site have produced the largest assemblage of reported pre-contact Native American pottery sherds ever recovered from Rhode Island. Recovered ceramic sherds will be examined for a number of attributes that include temper type, color, surface treatment, decoration, and rim shape and decoration. Regional studies will be consulted for the identification and interpretation of vessel attributes. Ceramic sherds from the site may also exhibit visible residues, which could undergo further analysis (see below).

Lithic/Petrographic Analyses

The recovered lithic assemblage will be examined on a macroscopic scale. Cataloging will include classifying chipping debris recovered during Phase III data recovery investigations by class (flakes or shatter, material type, size (0-1 cm, 1-3 cm, 3-5 cm, etc.), color, and weight. A lithic type-collection maintained at PAL containing materials from various source areas throughout the Northeast will be used to macroscopically identify the collected materials. Representative "non-local" lithic materials will be submitted to non-destructive X-Ray Fluorescence (XRF) to determine their geochemistry. The resultant geochemical data will assist in the further development of a regional database of inter- and intra-source area geochemical variability of southern New England's lithic sources and also provides a quantitative method of correlating lithic materials recovered from archaeological sites with their original source areas.

Lithic analysis will also include the examination of stone tools and debitage to reconstruct tool-manufacturing sequences. Stone tools will be examined for use wear patterns or other evidence of their function. This use wear analysis will be conducted using a binocular microscope (10x to 20x). Examination of use wear can assist in determining the kinds and types of activities were conducted on site.

Starch/Phytolith

Assessing the role the maize (corn) played in the pre-contact Native American diet in the Narragansett Bay and southern New England areas has been of particular interest to many southern New England archaeologists for more than three decades. An assessment of the importance of maize in the pre-contact Native American diet has typically relied on the recovery of macro-botanical remains such as kernels or cobs visible to the naked eye. A relative absence of macro-botanical maize has led to the suggestion by some that maize horticulture may not have been a significant Native American subsistence strategy in southern New England prior to the arrival of Europeans. The New York State Museum's work examining vegetal phytoliths recovered from cooking residues preserved on ceramic sherds is providing new information on the age and types of food resources prepared by some indigenous peoples in the Northeast. Representative ceramic sherds from the Salt Pond site will be testing for starches and phytoliths to determine what foods were being processed by the site's inhabitants.



Protein Residue

Residue analyses will be performed on selected artifacts recovered during Phase III data recovery investigations at the Salt Pond site. Residue analyses may provide important data on the pre-contact diet of the site's inhabitants. Residue analyses may provide information on animal proteins or plant or other food remains (starch grains, phytoliths, lipids) from residues left on ceramic sherds or stone tools.

Seasonality Studies

Interpreting the nature of RI 110 and determining what type of settlement it is requires determining how long and for what season(s) the site was occupied. Determining site seasonality traditionally has relied on the recovery plant and animal remains and correlating these remains with a season or seasons in which these species would have been ecologically abundant. Such studies however commonly produce biased results in favor of the late summer/early fall months when many resources naturally peak. PAL proposes to assess RI 110 seasonality by conducting species specific analyses. Representative shells and white-tail deer teeth will be thin-sectioned and inspected by dipter lens and stereomicroscope to observe growth lines to determine which season(s) these resources were collected and exploited.

Environmental Studies

Evaluating the role that RI 110 played in the pre-contact Narragansett Indian settlement system requires determining the environment in which the site was located. Environmental reconstructions for the upper Point Judith Pond area of Narragansett and South Kingstown are limited. PAL proposes to secure outside consultants to oversee a pollen coring program for the upper Point Judith Pond area and to conduct pollen analysis of selected soil samples from the Salt Pond site to reconstruct the paleoenvironment in which RI 110 occupied.

Task 7: Site Documentation

Upon completion of the specialized analyses and artifact cataloging, PAL will prepare a technical report that summarizing the results of the archaeological investigations of the Salt Pond site, describes and interprets the site's artifact and feature content, and discusses the archaeological significance of the site. The report will follow the guidelines established by the National Park Service in the *Recovery of Scientific, Prehistoric, Historic, and Archeological Data* (36 CFR Part 66, Appendix A) and by the RIHPHC (2007). Draft copies of the report will be submitted to appropriate agencies for review. The final report will follow the draft review. The archaeological site form for RI 110 will be updated and submitted to the RIHPHC.

The RIDOT recognizes that the Salt Pond site is an archaeological resource of unparalleled significance to the Narragansett and the State of Rhode Island. PAL will also prepare a *National Historic Landmark Nomination* for the Salt Pond site/RI 110.



Task 8: Public Outreach

Salt Pond site archaeological site information will be disseminated to the public. The dissemination of information will include at least one presentation and a poster at a professional academic conference or venue and several lectures for various public organizations. PAL will also generate a popular archaeological report that will be made available for distribution by the RIDOT. PAL will also develop a website dedicated to the Salt Pond site that will be linked to the RIDOT and RIHPHC websites. A video documentary highlighting the site and its cultural and archaeological significance will be produced presented to interested audiences.

Task 9: Interpretive Panels

PAL will assist the RIDOT with developing text and illustrations to eventually accompany two interpretive panels for permanent placement at the Salt Pond site in Narragansett. PAL assumes that each panel will include roughly between 400 and 500 words of text and accompanying graphics. PAL will obtain the necessary usage permissions and high resolution files for any illustrations to be used.

Schedule

PAL is prepared to conduct the field review and begin artifact processing, cataloging, and analyses upon receipt of a notice-to-proceed by the RIDOT. The field review can be scheduled within two weeks of the notice to proceed and state acquisition of the Salt Pond site, so long as ground conditions allow. Site restoration will be coordinated with the RIDOT, NITHPO, and the RIHPHC and is anticipated to take four to six weeks to complete. Artifact processing, cataloging, and specialized analyses are expected to take one year to complete. The draft report will be submitted within eighteen months of the project start date. Submission of the draft *National Historic Landmark Nomination* will be submitted within three months of submission of the draft technical report. The popular report, website, and documentary video will follow within six months of receipt of comments on the draft report.

Project Personnel

The project will be overseen by Principal Investigators Joseph Waller and Alan Leveillee, and Laboratory Manager Heather Olson. All PAL project personnel meet the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR 61) and RIHPHC standards.



PUBLIC ARCI
- COI

PREP:

DATE June 26, 2013

ation / VETB

Public Archaeology Laboratory

PROJECT Salt Pond

SERVICES Analysis, Report, Public Education, Site Restoration

PERSONNEL	TASK	HOURS	RATE	COST
St. Project Manager	Coordination/Meetings	80	\$5.00	4,000
Principal Investigators	Consultation/Coordinator	160	48.00	7,680
Jay Walker & Alex Lovelace	Analysis	60	48.00	2,880
	Research	120	48.00	5,760
	Field Assessment	24	48.00	1,152
	Technical Report	300	48.00	14,400
	NHL Preparation	160	48.00	7,680
	Interpretive Panels	40	48.00	1,920
	Public Education Pamphlets	80	48.00	3,840
	Poster	40	48.00	1,920
	Public Presentations	120	48.00	5,760
	Website	40	48.00	1,920
	Video Filming	48	48.00	2,304
Project Archaeologist	Research	60	33.00	1,980
	Machine Monitoring	200	33.00	6,600
	Analysis	120	33.00	3,960
	Poster	40	33.00	1,320
	Technical Report	120	33.00	3,960
Laboratory Manager	Laboratory Coordination	100	33.00	3,300
Heather Olson	Cataloging	40	33.00	1,320
	Analysis	120	33.00	3,960
	Video Filming	16	33.00	528
Laboratory Analyst	Cataloging	340	25.00	8,500
	Analysis	100	25.00	2,500
Laboratory Assistant	Processing	800	22.00	17,600
Production Coordinator	Editing	120	32.00	3,840
	Formatting	100	32.00	3,200
CAD/GIS Specialist	Technical Graphics/Maps	120	32.00	3,840
TOTAL PERSONNEL COSTS		3,668		128,024
INDIRECT COST RATE				
Overhead Expense			108.91%	139,431
OTHER EXPENSES				
DESCRIPTION		COST		
Reproduction	Copying, Report Expansion, etc.			12,000
Graphics	Maps, Photographs, etc.			500
Communication	Postage			200
Expendable Supplies	Archival Paper, Boxes, Bags, Tagging, etc.			3,000
Analysis				
Blood/Paint				10,000
Wood Charcoal Identification				3,500
Starch/Phytolith				3,500
Protein Residue				5,000
Pollen/Search				17,000
Pollen Counting Program				30,000
Shell Sexuality	400 Samples @ \$	30.00		12,000
C-14 Dating - AMS	65 Samples @ \$	650.00		42,250
Videographer				75,000
Machine Work				
Mobilization/Dismob				550
Dump Truck	2 Days @ \$	825.00		1,650
Front End Loader	5 Days @ \$	330.00		1,650
Backhoe	30 Days @ \$	275.00		8,250
Operator	30 Days @ \$	600.00		18,000
Disposal Costs	4 Loads @ \$	275.00		1,100
Additional Backfill Material				
Loam	5 acres			72,600
Hydraseed Wildflower Mix	5 acres			17,000
Grillage	1,000 Miles @ \$	0.565		565
Construction	35 Boxes @ \$	90.00		3,150
TOTAL OTHER EXPENSES				338,165
FIXED FEE @10% OF PERSONNEL & OVERHEAD				26,745
TOTAL PAL COST PROPOSAL				692,605
*This quote is valid for 120 days from date listed above.				



PUBLIC ARCHAEOLOGY LABORATORY

- COST PROPOSAL -

PREPARED FOR Rhode Island Department of Transportation / VHB
 DATE June 26, 2013
 PROJECT Salt Pond
 SERVICES Video

PERSONNEL	TASK	HOURS	RATE	COST
Principal Investigators	Filming	48	55.00	2,640
Laboratory Manager	Filming	16	33.00	528
TOTAL PERSONNEL COSTS		64		3,168
INDIRECT COST RATE				
Overhead Expense			108.91%	3,450
OTHER EXPENSES DESCRIPTION COST				
Consultants	Videographer			75,000
Mileage	200 Miles @ \$		0.56	113
TOTAL OTHER EXPENSES				75,113
FIXED FEE @10% OF PERSONNEL & OVERHEAD				662
TOTAL PAL COST PROPOSAL				82,393
* This quote is valid for 120 days from date listed above.				

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



Michael P. Lewis
Director

Department of Transportation
OFFICE OF THE DIRECTOR
Two Capitol Hill
Providence, R.I. 02903-1124

OFFICE (401) 222-2481
FAX (401) 222-2086
TDD (401) 222-4971

September 16, 2013

Narragansett Indian Tribe
c/o Narragansett Indian Tribal Historic Preservation Office
Att: John Brown, Historic Preservation Officer
P.O. Box 700
Weymouth, Rhode Island 02898

Re: Providence Boys Club – Camp Davis

Dear Mr. Brown:

In accordance with the October 2011 *Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, and the Rhode Island Department of Transportation Regarding the Providence Viaduct Bridge No. 578 Replacement Project* (the Agreement) and subsequent January 2013 Amendment No. 1 thereto (the Amendment), the Federal Highway Administration (FHWA), in coordination with the Rhode Island Department of Transportation (RIDOT), remains ready, willing and able to transfer the so-called Providence Boys Club – Camp Davis (the Property) to the Narragansett Indian Tribal Historic Preservation Office (NITHPO) for and on behalf of the Narragansett Indian Tribe (collectively, the Tribe). This conveyance has not yet occurred due to our differences of opinion relative to the restrictive covenants, which are to be included in the deed of transfer pursuant to the Agreement and Amendment.

In an effort to eliminate this impasse, it is important to recall that the parties to the Agreement and Amendment share the common goal of preservation of the Property for future generations. In order to realize this goal, RIDOT requires the ability to enforce the covenants contained in the deed if, for instance, a future descendant does not share the same preservation objectives. In light of the Tribe's unique sovereign status, RIDOT requests that the Tribe provide a limited waiver of its sovereign immunity only as to the deed covenants. As the Tribe is well aware, state and federal courts have examined the issue of tribal sovereignty on several occasions, most recently by the United States District Court for the District of Rhode Island. To be clear, RIDOT only requests a waiver as to the covenants; it is not requesting that the Tribe waive its sovereignty for unrelated issues or third party claims brought against the Tribe for acts occurring on the Property. As such, RIDOT will transfer the Property subject to the following:

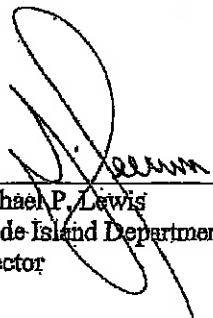
Exhibit 2

- The passage of a resolution by the Narragansett Indian Tribal Council waiving the Tribe's sovereign immunity as it pertains to the deed covenants and authorizing the Narragansett Indian Tribal Historic Preservation Office, through its Historic Preservation Officer, John Brown, to act on its behalf as to the 2011 Agreement, all Amendments thereto, and an agreement for the limited waiver of tribal sovereign immunity;
- Execution of an agreement by the Narragansett Indian Tribal Historic Preservation Office, through its Historic Preservation Officer, John Brown, which will waive the Tribe's sovereign immunity only as to the deed covenants for the Property to be transferred to the Tribe as mitigation for the effects of the Providence Viaduct Bridge No. 578 Replacement Project on the Providence Covelands Archeological District; and
- Inclusion of a covenant within the deed that the Property shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

For your convenience and review, RIDOT attaches a draft deed for the Property and a draft agreement with this correspondence. We welcome the opportunity to meet to discuss these terms. Please note that RIDOT may not hold this property indefinitely; failure to effect a transfer may require RIDOT to explore alternative mitigation measures, which may include disposal of the Property.

Please contact us with any questions relative to this matter. Thank you.

Sincerely,



Michael P. Lewis
Rhode Island Department of Transportation
Director

cc: Chief Sachem Matthew Thomas

BARGAIN AND SALE DEED

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the Grantor) acting through Michael P. Lewis, Director of the Department of Transportation, and Richard Licht, Director of the Department of Administration, pursuant to the authority of Title 37, Chapter 7 of the General Laws of Rhode Island, 1956, as amended, for consideration paid in the amount of one dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby bargain, sell, convey, grant, and release to the Narragansett Indian Tribal Historic Preservation Office for and/or behalf of the Narragansett Indian Tribe (hereinafter called the Grantee), having a principal place of business in Hopkinton, Rhode Island:

That certain tract or parcel of land together with all buildings and improvements thereon, situated on the westerly side of Lewis trail so called, formerly Indian Road, Town of Charlestown, County of Washington, State of Rhode Island, being further described in Exhibit "A", attached hereto and incorporated herein, and subject to the covenants and restrictions set forth in Exhibit "B", attached hereto and incorporated herein.

The above referenced property is transferred in accordance with paragraph 3(b) of that "Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Office, and the Rhode Island Department of Transportation regarding the Providence Viaduct Bridge No. 578 Replacement Project, Providence, Rhode Island", executed on October 3, 2011, and Amendment No. 1 to said Agreement executed on January 17, 2013, and Amendment No. 2 to said Agreement executed on _____, 2013, and subject to the covenants and restrictions contained herein.

This conveyance is subject to the rights of others in any ways, including Camp Davis Road and Lewis Trail, crossing the land.

This conveyance is such that no documentary stamps are required.

Compliance with the provisions of the smoke and carbon monoxide detector laws is not required.

Witness this _____ day of _____, 2013.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF TRANSPORTATION

By: _____
Michael P. Lewis, Director

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this _____ day of _____, 2013, then personally appeared before me Michael P. Lewis, Director of the Department of Transportation, to me known and known by me to be the person who executed the foregoing instrument for and on behalf of the State of Rhode Island and Providence Plantations, Department of Transportation, and he acknowledged the same to be the free act and deed of the State of Rhode Island and Providence Plantations, Department of Transportation, and his own free act and deed in his said capacity as Director, and individually.

NOTARY PUBLIC
My Commission Expires _____

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION

By: _____
Richard Light Director

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this _____ day of _____, 2013, then personally appeared before me Richard Light, Director of the Department of Administration, to me known and known by me to be the person who executed the foregoing instrument for and on behalf of the State of Rhode Island and Providence Plantations, Department of Administration, and he acknowledged the same to be the free act and deed of the State of Rhode Island and Providence Plantations, Department of Administration, and his own free act and deed in his said capacity as Director, and individually.

NOTARY PUBLIC
My Commission Expires _____

AGREED AND ACCEPTED:

Narragansett Indian Tribal Historic Preservation Office
for and on behalf of the Narragansett Indian Tribe

By: _____
Name: _____
Title: _____
Date: _____

STATE PROPERTIES COMMITTEE

APPROVED this _____ day of _____, 2013 by the State Properties Committee.

APPROVED:

Chairman, State Properties Committee

APPROVED AS TO FORM:

Designee for the Department of
Attorney General

APPROVED AS TO SUBSTANCE:

Designee of the Director, Department of
Administration

APPROVED:

Public Member

APPROVED:

Public Member

EXHIBIT A

Description of Property conveyed from the State of Rhode Island Department of Transportation to
the Narragansett Indian Tribal Historic Preservation Office

Those certain tracts or parcels of land with all buildings and improvements thereon, situated on the westerly side of Lewis trail so called, formerly Indian Road, Town of Charlestown, County of Washington, State of Rhode Island, being further described as follows:

Beginning at the south-easterly corner of the parcel herein described, said corner being the north-eastern corner of land now or formerly, Trust Lands of the Narragansett Indian Tribe, Tract No 2;

Thence S. $64^{\circ} 31' 31''$ W bounded south-easterly by said Tract No.2, a distance of two thousand, seven hundred forty-four and forty-five hundredths (2,744.45) feet to a point for a corner and set stainless steel post with brass cap;

Thence turning and running south $57^{\circ} 01' 34''$ W, bounded south-easterly by said Tract No.2, a distance of four hundred two and zero hundredths (402.00) feet to a point for a corner and set stainless steel post with brass cap;

Thence turning and running westerly, northerly and easterly along the easterly shore line of School House Pond (so called) or formerly Quacompong Pond, a distance of three thousand, one hundred sixty (3,160.00) +/- feet to a point marking the North-westerly corner of the parcel herein described. This course also being marked by a survey closure line running N $01^{\circ} 14' 17''$ E a distance of two thousand one hundred ninety-three and eleven hundredths (2,193.11) feet to said north-westerly corner set by a stainless steel post with a brass cap;

Thence turning and running N $87^{\circ} 16' 41''$ E bounded northerly in part by land now or formerly "Trust Lands of the Narragansett Indian Tribe, Tract No. 1", in part by land now or formerly Blaine and Simond Gonsalves and in part by land now or formerly "Trust Lands of the Narragansett Indian Tribe, Tract No. 4", a distance of two thousand four hundred fourteen and zero hundredths (2,414.00) feet to a point for a corner set with a stainless steel post with brass cap;

Thence turning and running S $56^{\circ} 46' 19''$ E bounded north-easterly by said Tract No. 4 a distance of sixteen and zero hundredths, (16.00) feet to a point for a corner set with a stainless steel post with a brass cap;

Thence turning and running S $09^{\circ} 40' 19''$ E along the face of a stonewall set on the westerly side of said Lewis Trail, a distance of three hundred ninety-four and zero hundredths (394.00) feet to a point for an angle;

Thence turning and running S $09^{\circ} 06' 19''$ E along said stone wall and westerly line of said Lewis Trail, a distance of one hundred six and zero hundredths (106.00) feet to a point for an angle and set stainless steel post with a brass cap;

Thence turning and running S 24°16'19" E along said stonewall and westerly line of said Lewis Trail, a distance of one hundred four and zero hundredths (104.00) feet to a point for an angle;

Thence turning and running S 32°46' 19" E along said stonewall and westerly line of said Lewis Trail, a distance of two hundred thirty-four and zero hundredths (234.00) feet to a point for a corner;

Thence turning and running S 38°16'19" E along said stonewall and westerly line of said Lewis Trail, a distance of one hundred forty six and zero hundredths (146.00) feet to the point and place of beginning and a set stainless steel post with brass cap.

Meaning and intending to describe the same premises contained in a deed recorded on May 15, 2013 at Book 383, Page 533.

DRAFT

EXHIBIT B

Attached hereto and made a part hereof:

The Grantee covenants for itself, its successors and assigns and every successor in interest to the real property described in Exhibit "A" ("Property") hereby conveyed, or any part thereof, is hereby conveyed subject to the conditions, restrictions, and limitations hereinafter set forth which are covenants running with the land in perpetuity; that the Grantee, its successors and assigns covenants and agrees that in the event the Property is transferred, sold or otherwise disposed of, these covenants and restrictions shall be inserted in the instruments of conveyance.

1. The Property shall be maintained in perpetuity in its current undeveloped and natural condition for uses consistent with agricultural, educational, cultural, and low-impact recreational activities that shall not significantly impact the natural, historical, archeological and cultural values of the Property.
2. The Property shall at all times be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.
3. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the real property, shall be conveyed separately from one another. The Grantee shall not convey or attempt to convey any interest in the Property to any party other than to the Narragansett Indian Tribe or any of the Tribe's related affiliates or associated tribal entities.
4. The Property shall in no way be used to satisfy the density, frontage, setback or other requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.
5. Those parcels of land contiguous to, and called "Lewis Trail" shall continue to enjoy the right to use said Lewis Trail for ingress, egress and access to said parcels of land.
6. In the event of any violation of the above listed covenants, the Grantor, its assigns, the Rhode Island Historic Preservation Office, the Narragansett Indian Tribal Historic Preservation Officer, or the Federal Highway Administration may institute a suit to enjoin such violation or for damages by reason of any breach thereof.
7. The remedies for any breach of the covenants herein, other than paragraph 3, that is not cured within a reasonable period of time, shall include the right for the Grantor or its assigns to re-enter said Property and the above-described Property shall thereupon revert to and vest in and become the absolute property of the State of Rhode Island jointly with the Narragansett Indian Tribal Historic Preservation Office, with both parties enjoying equal rights to the entire Property, for and on behalf of the Narragansett Indian Tribe in accordance with that "Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Officer and the Rhode Island Department of Transportation regarding the Providence Viaduct Bridge No. 578 Replacement Project, Providence, Rhode Island", executed on October 3, 2011, and Amendment No. 1 to said Agreement executed on January 17, 2013 and subject to the covenants and restrictions contained herein.

8. Without any further action, any breach of the covenants contained in paragraph 3 shall result in the Grantor, or its assigns, automatically reentering the above-described Property which shall thereupon revert to and vest in and become the absolute property of the State of Rhode Island jointly with the Narragansett Indian Tribal Historic Preservation Office, with both parties enjoying equal rights to the entire Property, for and on behalf of the Narragansett Indian Tribe in accordance with that "Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Officer and the Rhode Island Department of Transportation regarding the Providence Viaduct Bridge No. 578 Replacement Project, Providence, Rhode Island", executed on October 3, 2011, and Amendment No. 1 to said Agreement executed on January 17, 2013, and subject to the covenants and restrictions contained herein.

AGREED AND ACCEPTED:

Narragansett Indian Tribal Historic Preservation Office
for and on behalf of the Narragansett Indian Tribe

By: _____

Name: _____

Title: _____

Date: _____

DRAFT

**LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY FOR PROPERTY
COVENANTS TO MITIGATE THE EFFECTS OF THE
PROVIDENCE VIADUCT BRIDGE NO. 578 REPLACEMENT PROJECT
BETWEEN
THE NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE,
AND
THE RHODE ISLAND DEPARTMENT OF TRANSPORTATION**

WHEREAS pursuant to 36 CFR Part 800 regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended, the U.S. Department of Transportation, Federal Highway Administration ("FHWA"), the Rhode Island State Historic Preservation Office ("RISHPO"), the Narragansett Indian Tribal Historic Preservation Office ("NITHPO") and the State of Rhode Island, acting by and through the Rhode Island Department of Transportation ("RIDOT") executed a Programmatic Agreement ("2011 PA") in October 2011 regarding the Providence Viaduct Bridge No. 578 Replacement Project (the "Undertaking") to ensure that potential effects on historic properties are taken into account and to satisfy FHWA's Section 106 responsibility for the Undertaking; and,

WHEREAS the FHWA, RISHPO, NITHPO and RIDOT agreed that the Undertaking shall be implemented in accordance with the Stipulations Nos. 1 through 11 as identified in the executed 2011 PA; and,

WHEREAS the FHWA, RISHPO, NITHPO and RIDOT amended the 2011 PA by execution of the January 2013 Amendment No. 1 (Amendment) that replaced Stipulation No. 3 in its entirety; and,

WHEREAS the Amendment requires RIDOT to transfer three properties (collectively, the Property) to NITHPO on behalf of the Narragansett Indian Tribe (the Tribe) as mitigation for the effects of the Undertaking on the Providence Covellands Archaeological District (RI 935) under the following terms:

a. RIDOT shall acquire and transfer ownership of the Salt Pond Archaeological Preserve (RI 110), a National Register-eligible historic property and significant Narragansett Indian Tribal cultural property located in the Town of Narragansett, Rhode Island to the State of Rhode Island jointly with the Narragansett Indian Tribal Historic Preservation Office for and/on behalf of the Narragansett Indian Tribe. Details of the ownership and public access shall be detailed in a Memorandum of Agreement between the RISHPO and NITHPO developed in consultation with FHWA and RIDOT. Said Salt Pond Archaeological Preserve (RI-110) comprises Town of Narragansett's Tax Assessor's Plat W, Lot 81, Lot 82/Subdivision Lots 27-79 and Lot 82/Subdivision Lots A (portion), B, C, E (portion), F, G, H, I, J and K. RIDOT shall consult with the signatories to the 2011 PA to develop and implement appropriate covenants that preserve the property and its cultural resources and, provide reasonable and controlled public access in perpetuity, which shall be included in the deed for said Salt Pond Archaeological Preserve (RI 110),

b. RIDOT shall acquire and transfer ownership of the so-called "Providence Boys Club - Camp Davis" (a 105+- acre parcel), a significant Narragansett Indian Tribal cultural property located in Charlestown, Rhode Island, to the Narragansett Indian Tribal Historic Preservation Office for and/on behalf of the Narragansett Indian Tribe. Said

Limited Waiver of Tribal Sovereign Immunity

property comprises Town of Charlestown's Tax Assessor's Plat 19, Lot 75. Appropriate covenants that preserve the property and its cultural resources in perpetuity shall be included in the deed for said property.

- c. RIDOT shall acquire and transfer ownership of the so called "Chief Sachem Night Hawk property (a.k.a. Philip Peckham property)", a significant Narragansett Indian Tribal cultural property located a 4553 South County Trail (Tax Assessor's Plat 22, Lot 9-1) in the Town of Charlestown, Rhode Island to the Narragansett Indian Tribal Historic Preservation Office for and/on behalf of the Narragansett Indian Tribe. Appropriate covenants that preserve the property and its cultural resources in perpetuity shall be included in the deed for said property; and

WHEREAS the covenants in the deeds to preserve the Property and its cultural resources in perpetuity are enforceable through the Tribe's express waiver of its sovereign immunity.

NOW THEREFORE, NITHPO and RIDOT agree as follows:

I. Limited Waiver of Tribal Sovereign Immunity As to Covenants Contained in Deeds For Property Transferred as Mitigation for the Effects of the Undertaking on the Providence Covelands Archaeological District (RI 935):

In accordance with the duly passed Resolution by the Narragansett Indian Tribal Council sitting in legal session and executed by the Chief Sachem and the Tribal Secretary (Resolution attached hereto and incorporated herein by reference), the Tribe clearly, expressly, and unequivocally:

- A. Authorizes NITHPO to execute the 2011 PA, any Amendments thereto, and this Limited Waiver of Tribal Sovereign Immunity; and
- B. Consents and resolves to waive the Tribe's sovereign immunity as to the covenants contained in the deeds for the Property, which includes waiver of the Tribe's treaty rights against suit, liability, judgment and collection with respect to its obligations and duties arising from the covenants contained in the deeds for the Property.

In so waiving its immunity, the Tribe recognizes and agrees, that any suits, or administrative actions brought against it relating to the duties and obligations referenced above may only be brought in the state and federal courts of Rhode Island and that all such actions and proceedings, shall be governed by Rhode Island's substantive and procedural law.

Limited Waiver of Tribal Sovereign Immunity

SIGNATORIES:

NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
John Brown
Narragansett Indian Tribal Historic Preservation Officer

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Michael P. Lewis, Director
Rhode Island Department of Transportation

DRAFT

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



Michael P. Lewis
Director

Department of Transportation
OFFICE OF THE DIRECTOR
Two Capitol Hill
Providence, R.I. 02903-1124

OFFICE (401) 222-2481
FAX (401) 222-2086
TDD (401) 222-4971

September 17, 2013

Narragansett Indian Tribe
c/o Narragansett Indian Tribal Historic Preservation Office
Att: John Brown, Historic Preservation Officer
P.O. Box 700
Wyoming, Rhode Island 02898

Re: Chief Sachem Night Hawk property

Dear Mr. Brown:

In accordance with the October 2011 *Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, and the Rhode Island Department of Transportation Regarding the Providence Viaduct Bridge No. 578 Replacement Project* (the Agreement) and subsequent January 2013 Amendment No.1 thereto (the Amendment), the Federal Highway Administration (FHWA), in coordination with the Rhode Island Department of Transportation (RIDOT), remains ready, willing and able to transfer the so-called Chief Sachem Night Hawk property (the Property) to the Narragansett Indian Tribal Historic Preservation Office (NITHPO) for and on behalf of the Narragansett Indian Tribe (collectively, the Tribe). This conveyance has not yet occurred due to our differences of opinion relative to the restrictive covenants, which are to be included in the deed of transfer pursuant to the Agreement and Amendment.

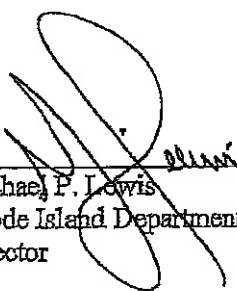
In an effort to eliminate this impasse, it is important to recall that the parties to the Agreement and Amendment share common preservation goals for future generations. In order to realize this goal, RIDOT requires the ability to enforce the covenants contained in the deed if, for instance, a future descendant does not share the same preservation objectives. In light of the Tribe's unique sovereign status, RIDOT requests that the Tribe provide a limited waiver of its sovereign immunity only as to the deed covenants. As the Tribe is well aware, state and federal courts have examined the issue of tribal sovereignty on several occasions, most recently by the United States District Court for the District of Rhode Island. To be clear, RIDOT only requests a waiver as to the covenants; it is not requesting that the Tribe waive its sovereignty for unrelated issues or third party claims brought against the Tribe for acts occurring on the Property. As such, RIDOT will transfer the Property subject to the following:

- The passage of a resolution by the Narragansett Indian Tribal Council waiving the Tribe's sovereign immunity as it pertains to the deed covenants and authorizing the Narragansett Indian Tribal Historic Preservation Office, through its Historic Preservation Officer, John Brown, to act on its behalf as to the 2011 Agreement, all Amendments thereto, and an agreement for the limited waiver of tribal sovereign immunity;
- Execution of an agreement by the Narragansett Indian Tribal Historic Preservation Office, through its Historic Preservation Officer, John Brown, which will waive the Tribe's sovereign immunity only as to the deed covenants for the Property to be transferred to the Tribe as mitigation for the effects of the Providence Viaduct Bridge No. 578 Replacement Project on the Providence Covelands Archeological District; and
- Inclusion of a covenant within the deed that the Property shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

For your convenience and review, RIDOT attaches a draft deed for the Property and a draft agreement with this correspondence. We welcome the opportunity to meet to discuss these terms. Please note that RIDOT may not hold this property indefinitely; failure to effect a transfer may require RIDOT to explore alternative mitigation measures, which may include disposal of the Property.

Please contact us with any questions relative to this matter. Thank you.

Sincerely,



Michael P. Lewis
Rhode Island Department of Transportation
Director

cc: Chief Sachem Matthew Thomas

Page 3 of 3
September 17, 2013

Bcc: Mr. Carlos Machado, Mr. Dan Berman, Ms. Barbara Breslin, P. Kydd, M. Martinelli, M. Long. A. Jacques

BARGAIN AND SALE DEED

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the Grantor) acting through Michael P. Lewis, Director of the Department of Transportation, and Richard Licht, Director of the Department of Administration, pursuant to the authority of Title 37, Chapter 7 of the General Laws of Rhode Island, 1956, as amended, for consideration paid in the amount of one dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby bargain, sell, convey, grant, and release to the Narragansett Indian Tribal Historic Preservation Office for and on behalf of the Narragansett Indian Tribe (hereinafter called the Grantee), having a principal place of business in Hopkinton, Rhode Island:

That certain tracts or parcel of land with all buildings and improvements situated on the westerly side of South County Trail in the Town of Charlestown, County of Washington, State of Rhode Island further described in Exhibit A attached hereto and incorporated herein, and which parcel of land is subject to the covenants and restrictions set forth in Exhibit B, attached hereto and incorporated herein.

The above referenced property is transferred in accordance with paragraph 3(b) of that "Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Officer and the Rhode Island Department of Transportation regarding the Providence Viaduct Bridge No. 578 Replacement Project, Providence, Rhode Island", executed on October 3, 2011, and Amendment No. 1 to said Agreement executed on January 17, 2013, subject to the covenants and restrictions contained herein.

This conveyance is such that no documentary stamps are required.

Witness this _____ day of _____, 2013.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF TRANSPORTATION

By: _____
Michael P. Lewis, Director

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this _____ day of _____, 2013, then personally appeared before me Michael P. Lewis, Director of the Department of Transportation, to me known and known by me to be the person who executed the foregoing instrument for and on behalf of the State of Rhode Island and Providence Plantations, Department of Transportation, and he acknowledged the same to be the free act and deed of the State of Rhode Island and Providence Plantations, Department of Transportation, and his own free act and deed in his said capacity as Director, and individually.

NOTARY PUBLIC
My Commission Expires _____

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION

By: _____
Richard Licht, Director

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this _____ day of _____, 2013, then personally appeared before me Richard Licht, Director of the Department of Administration, to me known and known by me to be the person who executed the foregoing instrument for and on behalf of the State of Rhode Island and Providence Plantations, Department of Administration, and he acknowledged the same to be the free act and deed of the State of Rhode Island and Providence Plantations, Department of Administration, and his own free act and deed in his said capacity as Director, and individually.

NOTARY PUBLIC
My Commission Expires _____

AGREED AND ACCEPTED:
Narragansett Indian Tribal Historic Preservation Office
for and/on behalf of the Narragansett Indian Tribe

By: _____
Name: _____
Title: _____
Date: _____

STATE PROPERTIES COMMITTEE

APPROVED this _____ day of _____, 2013 by the State Properties Committee.

APPROVED:

Chairman, State Properties Committee

APPROVED AS TO FORM:

Designee for the Department of
Attorney General

APPROVED AS TO SUBSTANCE:

Designee of the Director, Department of
Administration

APPROVED:

Public Member

APPROVED:

Public Member

EXHIBIT A

Description of Property conveyed from the State of Rhode Island Department of Transportation to
the Narragansett Indian Tribal Historic Preservation Office

That certain tract or parcel of land, together with the buildings and improvements thereon, situated in the Town of Charlestown, County of Washington, State of Rhode Island, bounded and described as follows:

Northerly by land now or formerly called Anthony land; easterly by the State Highway, commonly known as South County Trail; southerly partly by land known as Henry Champlin land and partly by land known as Bocemdes land and westerly by land known as Bocemdes land; said parcel of land being shown and delineated as "John A. Perkins 3A 11 4/10 rods" on that plat entitled: "Map of Indian Reservation, Charlestown, Rhode Island" on file in the Office of the Town Clerk of said Town of Charlestown.

Excepting therefrom, so much of the premises previously conveyed by deeds from Mary A. Coggsweil recorded in Book 37, Page 240 and in Book 38, Page 260.

Together with and subject to the right of way more particularly described in Book 38, Page 260.

Meaning and intending to describe the same premises contained in a deed recorded on March 1, 2013 at Book 380, Page 602.

EXHIBIT B

Attached hereto and made a part hereof:

The Grantee covenants for itself, its successors and assigns and every successor in interest to the real property described in Exhibit "A" ("Property") hereby conveyed, or any part thereof, is hereby conveyed subject to the conditions, restrictions, and limitations hereinafter set forth which are covenants running with the land in perpetuity; that the Grantee, its successors and assigns covenants and agrees that in the event the Property is transferred, sold or otherwise disposed of, these covenants and restrictions shall be inserted in the instruments of conveyance.

1. The Property shall be maintained in perpetuity in its current, undeveloped and natural condition for uses consistent with agricultural, educational, cultural, and low-impact recreational activities that shall not significantly impact the natural, historical, archeological and cultural values of the Property.
2. The Property shall at all times be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.
3. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the real property, shall be conveyed separately from one another. The Grantee shall not convey or attempt to convey any interest in the Property to any party other than to the Narragansett Indian Tribe or any of the Tribe's related affiliates or associated tribal entities.
4. The Property shall in no way be used to satisfy the density, frontage, setback or other requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.
5. In the event of any violation of the above listed covenants, the Grantor, its assigns, the Rhode Island Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Officer, or the Federal Highway Administration may institute a suit to enjoin such violation or for damages by reason of any breach thereof.
6. Any public utilities or municipalities having facilities under, over or through the Property herein conveyed as of the date of these presents shall have the right and easement to continue to maintain, operate and renew their facilities within the premises herein described.
7. No billboard, sign or other outdoor advertising devices shall be erected upon said Property other than those indicating ownership and type of activity being conducted on the premises and shall be subject to reasonable restrictions with respect to number, size, location and design by regulation of the Department of Transportation and/or the Federal Highway Administration and subject to local zoning ordinances.
8. The remedies for any breach of the covenants herein, other than paragraph 3, that is not cured within a reasonable period of time, shall include the right for the Grantor or its assigns to re-enter said Property and the above-described Property shall thereupon revert to and vest in and become the absolute property of the State of Rhode Island jointly with the Narragansett Indian Tribal Historic Preservation Office, with both parties enjoying equal rights to the entire Property, for and on behalf of the Narragansett Indian Tribe in accordance with that "Programmatic Agreement

among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Officer and the Rhode Island Department of Transportation regarding the Providence Viaduct Bridge No. 578 Replacement Project, Providence, Rhode Island", executed on October 3, 2011, and Amendment No. 1 to said Agreement executed on January 17, 2013, and subject to the covenants and restrictions contained herein.

9. Without any further action, any breach of the covenants contained in paragraph 3 shall result in the Grantor, or its assigns, automatically reentering the above-described Property which shall thereupon revert to and vest in and become the absolute property of the State of Rhode Island jointly with the Narragansett Indian Tribal Historic Preservation Office, with both parties enjoying equal rights to the entire Property, for and on behalf of the Narragansett Indian Tribe in accordance with that "Programmatic Agreement among the Federal Highway Administration, the Rhode Island State Historic Preservation Officer, the Narragansett Indian Tribal Historic Preservation Officer and the Rhode Island Department of Transportation regarding the Providence Viaduct Bridge No. 578 Replacement Project, Providence, Rhode Island", executed on October 3, 2011, and Amendment No. 1 to said Agreement executed on January 17, 2013, and subject to the covenants and restrictions contained herein.

AGREED AND ACCEPTED:

Narragansett Indian Tribal Historic Preservation Office
for and on behalf of the Narragansett Indian Tribe

By: _____
Name: _____
Title: _____
Date: _____

**LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY FOR PROPERTY
COVENANTS TO MITIGATE THE EFFECTS OF THE
PROVIDENCE VIADUCT BRIDGE NO. 578 REPLACEMENT PROJECT
BETWEEN
THE NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE,
AND
THE RHODE ISLAND DEPARTMENT OF TRANSPORTATION**

WHEREAS pursuant to 36 CFR Part 800 regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended, the U.S. Department of Transportation, Federal Highway Administration ("FHWA"), the Rhode Island State Historic Preservation Office ("RISHPO"), the Narragansett Indian Tribal Historic Preservation Office ("NITHPO") and the State of Rhode Island, acting by and through the Rhode Island Department of Transportation ("RIDOT") executed a Programmatic Agreement ("2011 PA") in October 2011 regarding the Providence Viaduct Bridge No. 578 Replacement Project (the "Undertaking") to ensure that potential effects on historic properties are taken into account and to satisfy FHWA's Section 106 responsibility for the Undertaking; and,

WHEREAS the FHWA, RISHPO, NITHPO and RIDOT agreed that the Undertaking shall be implemented in accordance with the Stipulations Nos. 1 through 11 as identified in the executed 2011 PA; and,

WHEREAS the FHWA, RISHPO, NITHPO and RIDOT amended the 2011 PA by execution of the January 2013 Amendment No. 1 (Amendment) that replaced Stipulation No. 3 in its entirety; and,

WHEREAS the Amendment requires RIDOT to transfer three properties (collectively, the Property) to NITHPO on behalf of the Narragansett Indian Tribe (the Tribe) as mitigation for the effects of the Undertaking on the Providence Covelands Archaeological District (RI 935) under the following terms:

- a. RIDOT shall acquire and transfer ownership of the Salt Pond Archaeological Preserve (RI 110), a National Register eligible historic property and significant Narragansett Indian Tribal cultural property located in the Town of Narragansett, Rhode Island to the State of Rhode Island jointly with the Narragansett Indian Tribal Historic Preservation Office for and/on behalf of the Narragansett Indian Tribe. Details of the ownership and public access shall be detailed in a Memorandum of Agreement between the RISHPO and NITHPO developed in consultation with FHWA and RIDOT. Said Salt Pond Archaeological Preserve (RI-110) comprises Town of Narragansett's Tax Assessor's Plat W, Lot 81, Lot 82/Subdivision Lots 27-79 and Lot 82/Subdivision Lots A (portion), B, C, E (portion), F, G, H, I, J and K. RIDOT shall consult with the signatories to the 2011 PA to develop and implement appropriate covenants that preserve the property and its cultural resources and, provide reasonable and controlled public access in perpetuity, which shall be included in the deed for said Salt Pond Archaeological Preserve (RI 110).
- b. RIDOT shall acquire and transfer ownership of the so-called "Providence Boys Club - Camp Davis" (a 105+/- acre parcel), a significant Narragansett Indian Tribal cultural property located in Charlestown, Rhode Island, to the Narragansett Indian Tribal Historic Preservation Office for and/on behalf of the Narragansett Indian Tribe. Said

Limited Waiver of Tribal Sovereign Immunity

property comprises Town of Charlestown's Tax Assessor's Plat 19, Lot 75. Appropriate covenants that preserve the property and its cultural resources in perpetuity shall be included in the deed for said property.

- c. RIDOT shall acquire and transfer ownership of the so called "Chief Sachem Night Hawk property (a.k.a. Philip Peckham property)", a significant Narragansett Indian Tribal cultural property located at 4553 South County Trail (Tax Assessor's Plat 22, Lot 9-1) in the Town of Charlestown, Rhode Island to the Narragansett Indian Tribal Historic Preservation Office for and/or behalf of the Narragansett Indian Tribe. Appropriate covenants that preserve the property and its cultural resources in perpetuity shall be included in the deed for said property; and

WHEREAS the covenants in the deeds to preserve the Property and its cultural resources in perpetuity are enforceable through the Tribe's express waiver of its sovereign immunity.

NOW THEREFORE, NITHPO and RIDOT agree as follows:

I. Limited Waiver of Tribal Sovereign Immunity As to Covenants Contained in Deeds For Property Transferred as Mitigation for the Effects of the Undertaking on the Providence Covelands Archaeological District (RI 935):

In accordance with the duly passed Resolution by the Narragansett Indian Tribal Council sitting in legal session and executed by the Chief Sachem and the Tribal Secretary (Resolution attached hereto and incorporated herein by reference), the Tribe clearly, expressly, and unequivocally:

- A. Authorizes NITHPO to execute the 2011 PA, any Amendments thereto, and this Limited Waiver of Tribal Sovereign Immunity; and
- B. Consents and resolves to waive the Tribe's sovereign immunity as to the covenants contained in the deeds for the Property, which includes waiver of the Tribe's treaty rights against suit, liability, judgment and collection with respect to its obligations and duties arising from the covenants contained in the deeds for the Property.

In so waiving its immunity, the Tribe recognizes and agrees, that any suits, or administrative actions brought against it relating to the duties and obligations referenced above may only be brought in the state and federal courts of Rhode Island and that all such actions and proceedings, shall be governed by Rhode Island's substantive and procedural law.

SIGNATORIES:

NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
John Brown
Narragansett Indian Tribal Historic Preservation Officer

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Michael P. Lewis, Director
Rhode Island Department of Transportation

STATE'S RESPONSE TO OPTIONS EXPLORED BY UDALL FOUNDATION
MEDIATION

OPTION A: The State transfers properties directly to the Tribe with a federal reverter (as discussed at the January 27, 2014 mediation session)

STATE'S RESPONSE: The State cannot allow for the reverter clause as it is in violation of federal law and is therefore illegal and unenforceable. The United States is prohibited from holding land in trust for the Narragansett Indian Tribe pursuant to Carcieri v. Salazar, 555 U.S. 379, 129 S.Ct. 1058, 172 L.Ed. 2e 791 (2009), which held that the Secretary of the Interior's authority under the Indian Reorganization Act (IRA) to take land into trust for Indians was limited to Indian tribes that were under federal jurisdiction when the IRA was enacted in 1934. The Narragansett Tribe was federally recognized in 1998 thereby foreclosing the land into trust process as it relates to the Tribe. Further, RIDOT would be unable to enforce the reverter and would need to look to the federal government for enforcement on its behalf.

OPTION B: The State transfers properties to FHWA with a perpetual easement for use of the land to the Tribe

STATE'S RESPONSE: If FHWA held title, the State would have to rely upon FHWA to enforce the covenants contained in the perpetual easement for use of the land by the Tribe. After discussions with FHWA and based upon past dealings, enforcement by the federal government is not feasible.

OPTION C: The State transfers properties to FHWA to hold in trust for the Tribe.

STATE'S RESPONSE: See response to Option A. Prohibited under Carcieri v. Salazar.

OPTION D: The State transfers properties to the Tribe with an automatic reverter

STATE'S RESPONSE The State cannot transfer property to the Tribe without the Tribe agreeing to covenants within the deed that provide that the land is subject to the civil and criminal laws and jurisdiction of the State of Rhode Island and providing the State with a limited waiver of sovereign immunity as to said covenants. Otherwise, the State has no means of enforcement.

OPTION E: The State transfers properties to FHWA: (a) conditioned on covenants which run with the land and with a possibility of reverter if covenants are violated and (b) jurisdiction over issue of reverter is agreed to be exclusively in RI State Court. Then FHWA transfers properties to Tribe subject to covenants in the deed from State to FHWA.

STATE'S RESPONSE: This is no different than Option B. The State would have to rely upon the federal government for enforcement.

OPTION F: State transfers properties to an entity other than FHWA or the Tribe with a perpetual easement for the use of the land to the Tribe

STATE'S RESPONSE: The parties were not able to identify any entity that would be able to effectuate the transfer without the same issues as those faced in Option B if it were a federal entity. If the entity were a non profit environmental or conservation group, it would be subject to the same sovereign immunity defenses as the State, facing the same defenses.

OPTION G: State disposes of the 3 properties

- a. To other State entity/entities;
- b. To municipal entity/entities
- c. To non-governmental entity/entities

STATE'S RESPONSE: The State can continue to hold title to the Salt Pond parcel as that was anticipated to be held jointly with the Tribe, thereby foreclosing the land to trust conversion. However, as to the Boys and Girls Club and Night Hawk House parcels, the State is not in a position to hold title to these parcels indefinitely due to the liability associated with same. As with any surplus properties purchased with federal funds, the State would be required to sell the parcels, subject to a right of first refusal by the Town of Charlestown, and utilize the proceeds for Title 23 purposes.

OPTION H: Alternative mitigation

STATE'S RESPONSE: In 2008, the Parties engaged in the Section 106 review process for the Providence Viaduct Bridge and agreed upon proposed alternative mitigation options in lieu of costly, time-consuming and potentially dangerous archaeological data recovery in the environs of the Providence Covelands Archaeological District. The 2011 PA and subsequent Amendment called for the State to acquire and/or fund the rehabilitation of properties of Narragansett Indian archaeological and cultural significance. RIDOT is open to exploring other mitigation alternatives as identified in Exhibit 4 herein, or to improve land or structures of the Tribe that are located on Settlement lands or other lands owned by the Tribe.

OPTION I: Reopen impact mitigation

STATE'S RESPONSE: There is no basis to reopen the impact mitigation - the facts that led FHWA to determine that a Phase III Archaeological Data Recovery Program to mitigate the effects of the Providence Viaduct Project on the Providence Covelands Archeological District were not feasible due to environmental, logistical and cost factors that have not changed. The question is simply determining appropriate mitigation alternatives.

OPTION J: Amendment #2 to Programmatic Agreement

STATE'S RESPONSE: The parties have not been able to reach an agreement with regard to the transfer of the Boys and Girls Club and Night Hawk House parcels that will provide for the ability to legally enforce the covenants that would preserve the property and its cultural resources in perpetuity. The State will continue to preserve the Salt Pond Archeological Preserve and either hold it in fee or hold it jointly with the Tribe as this was the original intent of the alternative mitigation.

Potential Alternatives in lieu of transferring Chief Sachem Night Hawk Property and Providence Boys and Girls Club Property to the NITHPO/Narragansett Indian Tribe

To move beyond this impasse, RIDOT proposes that other similarly valued mitigation options could be substituted in lieu of the transfer of the Providence Boys and Girls Club and Night Hawk properties. Options include but are not limited to providing comparable funding for rehabilitation and preservation of the historically significant standing structures at two locations on properties that are owned by the Narragansett Indian Tribe: the Granny Stanton House in the Town of Charlestown, RI and the Crandall Farm, in the Town of Westerly, RI. Further, the Parties could explore options for the Narragansett Indian Tribe to obtain greater control of and access to the Great Swamp Fight Memorial property in South Kingstown, RI.

Granny Stanton House:

- The Granny Stanton House is a significant Narragansett Indian tribal cultural property that is located on the Narragansett Indian Reservation in the Town of Charlestown. It consists of a one-and-a-half story, mid-nineteenth century wood-frame residence that is currently vacant and is very deteriorated and in need of major structural rehabilitation.
- The rehabilitation of the Granny Stanton House was originally included in the 2011 *Programmatic Agreement* (PA) as Stipulation No. 3 (d). RIDOT's architectural consultant conducted an extensive evaluation of the structure in 2012 and based on that evaluation, the estimated cost for rehabilitation was far more than what was expected. Taking the cost into consideration, when the PA was amended in January 2013, the rehabilitation of the structure was eliminated from the PA.

Crandall Farm:

- The Crandall Farm in the Town of Westerly consists of a historically significant, 350 acre property that was acquired by the Narragansett Indian Tribe in 1991 for preservation purposes. Known as the Elder John Crandall Farm, extant are an early 18th-century house that may incorporate portions of an earlier 1665 house built by Elder John Crandall, a mid-19th century wood frame residence and a mid-19th century wood frame barn and the Crandall family cemetery surrounded by fields and stone walls. Elder John Crandall purchased the property from the Narragansett Indian Sachem Sosoia in 1660 and it was in continuous Crandall family ownership until it was acquired by the Narragansett Indian Tribe. The property has been identified by the Rhode Island State Historic Preservation Office as potentially eligible for listing in the National Register of Historic Places. All of the structures are vacant and deteriorated. As part of RIDOT and FHWA's transportation enhancement program, the Narragansett Indian Tribe was awarded a transportation enhancement project in 2003; that project proved non-feasible to be implemented, and in 2004 the Narragansett Indian Tribal Historic Preservation Office (NITHPO) requested that the monies allocated for the earlier project (\$150,000) be transferred to a new transportation enhancement project for the tribe, to consist of: (1) the rehabilitation of the Crandall Farm structures for use by the tribe as a welcome center and educational facility, and (2) implement an environmental clean-up of the

property (removal of abandoned vehicles and hundreds of rusted metal barrels). Understanding that the original monies was not sufficient for the new enhancement project, in April 2011, the FHWA, RIDOT and NITHPO ratified an *Archaeological Mitigation Agreement* that resulted in adding the sum of \$300,000 to the Crandall Farm Transportation Enhancement Project, thereby bring the total to \$450,000. Due to the elevated cost for the implementation of the Crandall Farm Transportation Enhancement Project, the monies allocated for Crandall Farm (\$450,000) were re-allocated toward acquisition costs for the Salt Pond Preserve, the Providence Boys and Girls Club and Chief Sachem Night Hawk properties and this re-allocation is memorialized in Amendment No. 1 of the PA as Stipulation No. 3 (d).

Great Swamp Fight Memorial:

- The Great Swamp Fight Memorial property (a.k.a. Great Swamp Massacre Site) in the Town of South Kingstown is a 7.13 acre property that was the site of the main Narragansett Indian's winter fortified village. In December 1675, Colonial militia attacked the village and in the battle, many warriors, women and children died when the militia burned the village. The Narragansett Indian Tribe conducts a pilgrimage to the site annually to memorialize this tragedy. The property was conveyed to the Rhode Island Historical Society (RIHS) in 1906 and the Society still holds title to the property. The property is located in the middle of the State of Rhode Island's Great Swamp Wildlife Refuge and access to the property is via a gravel roadway through the Wildlife Refuge.
- The acquisition of the Great Swamp Fight Memorial property and its transfer to the Narragansett Indian Tribe was originally included in the 2011 PA as Stipulation No. 3 (b). Subsequent to ratification of the PA, this acquisition proved to be unfeasible and it was removed through the ratification of Amendment No. 1.
- Recent informal discussions with the RIHS suggest that the Society may be amenable to reaching an agreement with the Narragansett Indian Tribe concerning access and/or control of the property

As alternative mitigation, RIDOT therefore proposes a new Amendment to the PA (Amendment No. 2) that could include funding portions of the rehabilitation of standing NITHPO owned structures and RIDOT's support for greater access and/or control by the Narragansett Indian Tribe of the Great Swamp Fight Memorial property.

**Potential Alternatives in lieu of transferring Chief Sachem Night Hawk Property
and Providence Boys and Girls Club Property to the NITHPO/Narragansett Indian
Tribe continued**

RIDOT transfers ownership of the three (3) other historic parcels (Nipaschuck Hill, North Smithfield, Parcels 1 & 2 and I-295 Parcel in Johnston with a total area of approximately 146 acres) to be held jointly by RIDOT and the Tribe.

Nipaschuck Hill, North Smithfield (parcels 1 & 2) This property is currently owned by the State of Rhode Island. It is vacant with no improvements with a total area of 91 acres. This property has widely recognized historical and archeological significance. During King Philip's War, the First Battle at Nipashuck took place in this area on August 1, 1675. Oral history suggests that Pokanoket sachem Metacom and the Pocasset's sunksquaw Weetamoo participated in a ceremony at the time of the annual Perseid meteor shower. English and Mohegan-Pequot forces, under Captain Henchman of the Massachusetts Bay Colony, pursued Metacom and Weetamoo and engaged them in battle at Nipashuck. After suffering significant casualties, Metacom and Weetamoo's tribal units left the battle area and withdrew to a nearby swamp. They had slipped away by the time the English arrived at the swamp.

I-295 property, Johnston This property is currently owned by the State of Rhode Island. It is vacant and consists of 55 acres. This property is located in the area of several known Narragansett Indian archaeological sites. It contains numerous walls, foundations and stone features. NITHPO reports that some of the stone features are part of a ceremonial landscape. The RI Historical Preservation Heritage Commission considered it likely that there are prehistoric and historic sites present.